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In the Supreme Court of the United States

October Term, 1958

No. 115

EMANUEL RIGGI, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 331; Pet. 12) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 27, 1958 (R. 332). The petition for a writ of certiorari was filed on June 19, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial judge's instructions to the jury properly presented the issue raised by the petitioner's defense.

STATUTE INVOLVED

18 U.S.C. 1951(a):

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by * * * extortion or attempts or conspires so to do, * * * shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

STATEMENT

The petitioner seeks review of the judgment of the Court of Appeals for the Third Circuit (R. 332) affirming the judgment of the District Court for the District of New Jersey adjudging petitioner guilty, upon the verdict of a jury, of violation of 18 U.S.C. 1951 by an attempt to extort money from an employer of labor, and by conspiracy so to do (R. 4). The petitioner was sentenced to two years' imprisonment on each offense, the sentences to run concurrently (R. 6).

The evidence for the government was to the effect that a construction company, in order to maintain labor peace, agreed with Doyle, business agent of the bricklayers' local, and the petitioner, business agent of the laborers' local, to carry fictitious workers on its payrolls, the funds to go to the business agents. Arrangements were first made between Smith, a representative of the construction company, and Doyle (R. 26-2 , 34-35, 38, 90). Thereafter, in the petitioner's presence, Doyle said that the petitioner wished the same arrangement (R. 32). When Smith said that he did not have final authority to make the arrangements, the petitioner told him he had better have Mr. Stewart

(Smith's superior) come if they "wanted to be sure of labor relations on the job." (R. 37).

Stewart made the arrangements in negotiations with Doyle (R. 138-139, 144-149, 153). Subsequently, when Stewart encountered the petitioner at a restaurant, the petitioner asked him if he was "all straight with Doyle," and when Stewart replied in the affirmative, the petitioner said "Well, that's fine. You can bring in anyone you care to." (R. 143-144).

Both Doyle and the petitioner testified that they had not made requests for fictitious payments (R. 237-240, 242, 244-245, 252-253, 276-278, 280-283).

The judge's charge at the close of testimony (R. 290-320), in addition to extensive general instructions, included the following:

> As far as Mr. Riggi is concerned, he contends that he had no part either in the conspiracy, or an attempt to extort; and moreover he has been acquitted by this Court of the charge of actual extortion. [R. 301] [1]
>
> * * * *
>
> * * * Before you can find that a conspiracy existed between Doyle and Riggi, it is your duty to determine from all the evidence if Riggi at any time had an understanding or agreement with Doyle and Murphy or either of them to

[1] In another count charging actual extortion, the judge granted a motion for acquittal on the ground of lack of evidence that a co-defendant Doyle turned over petitioner's share to petitioner (R. 220). Doyle was acquitted on the substantive count by the jury, but, like petitioner, was convicted on the attempt and conspiracy counts (R. 4). He did not appeal (Pet. 2). The third co-defendant, Murphy, pleaded guilty to all three counts (R. 2).

obtain moneys by putting the executives and employees of Chemsteel Corporation in fear that economic loss would result. If you find from all of the evidence that Emanuel Riggi did not have an understanding and an agreement to obtain for himself or another the moneys testified about, then it becomes your duty to find Emanuel Riggi not guilty. All of this evidence must be established by the Government beyond a reasonable doubt, and if you do not so find beyond a reasonable doubt, it becomes your duty to find Riggi not guilty. [R. 315]

The petitioner's requests to charge No. 18 and 19, at issue here, were as follows (R. 323-324):

18. If you find from all of the evidence that Emanuel Riggi had knowledge that Doyle and Murphy had entered into an understanding or agreement with the executives and employees of Chemsteel Corporation, this knowledge would not be sufficient to make him a conspirator. Knowledge of payments in reference to the fictitious bricklayers in and of itself is not sufficient to make him an aider and abettor or co-conspirator of Doyle and Murphy. Before you may find Emanuel Riggi guilty, it is essential that you be satisfied beyond a reasonable doubt that Emanuel Riggi, in addition to the knowledge of the alleged arrangement, acted upon it and promoted the venture himself, make it his own and have a stake in its outcome. If you do not find beyond a reasonable doubt these factors, then Emanuel Riggi is not a conspirator, nor is he an aider and abettor in the conduct of Doyle and Murphy, and it is your duty, therefore, to find Emanuel Riggi not guilty.

19. There is evidence before you that a bricklayer requires, as part of his work, the aid and assistance of a common laborer. There is evidence before you that Doyle is the business agent of a Bricklayer's Union. There is likewise evidence before you that Emanuel Riggi is the business agent of what is commonly referred to as the Laborers' Union. The mere fact that Doyle and Riggi associated together, without more, is not evidence that their association was for a guilty purpose. You have no right to suspect that the mere conversation had between Doyle and Riggi were in and of themselves concerned for any illegal purpose. Their association and conversation, without more, is not proof of guilt. Presumptions of guilt are not lightly to be indulged from mere meetings.

The judge refused so to charge except as Request No. 18 and the last two sentences of Request No. 19 were already embodied in the previous instructions (R. 315). The Court of Appeals affirmed, *per curiam*, stating that "the substance of the requested instructions was adequately embraced in the trial court's charge to the jury" (R. 331).

ARGUMENT

The trial judge acted well within the area of his discretion in refusing the proffered instructions except to the extent they had been covered in the charge already given. The instructions as given, though differing from those requested in emphasis and phraseology, clearly placed the factual issues in the proper legal setting before the jury.

As this Court said in *United States* v. *Bayer*, 331 U.S. 532, 536-537:

> * * * Once the judge has made an accurate and correct charge, the extent of its amplification must rest largely in his discretion. The trial judge, in the light of the whole trial and with the jury before him, may feel that to repeat the same words would make them no more clear, and to indulge in variations of statement might well confuse. How far any charge on technical questions of law is really understood by those of lay background would be difficult to ascertain, but it is certainly more evident in the living scene than in a cold record. * * *

CONCLUSION

The judgment below is a correct disposition of a particular factual problem upon established principles, and no conflict of decisions is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.

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